

AG Contract No.: KR06-0014TRN  
ADOT ECS File No.: JPA 05-140  
TRACS: H6980 01X  
Section: I-10 Tortolita TI  
Approximately between Mile Post 232 & 234  
Town of Marana  
Source Item No.: TBD

## AGREEMENT

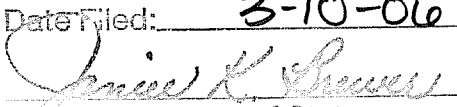

BETWEEN  
THE STATE OF ARIZONA  
AND  
TMR INVESTORS, LLC  
an Arizona Limited Liability Company

THIS AGREEMENT is entered into this date March 10th 2006, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TMR INVESTORS, LLC., an Arizona Limited Liability Company (the "Developer").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. TMR INVESTORS, LLC., is empowered to enter into this Agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.
3. The Developer is developing a master planned community called the Villages of Tortolita located approximately between Mile Post 232 and Mile Post 234 on the east side of I-10. The land use plan is designed with one of its primary access points at a proposed interstate interchange, located at Mile Post 233 in the vicinity of Marana, Arizona. The Developer, as part of the Developer's project, will fund the design and construction costs for a "Proposed Interchange" and provide all the required preliminary design and environmental documents associated with the Change of Access as required by FHWA and ADOT.
4. Nothing herein shall be construed to impose an obligation on the State to construct or in any way fund the Proposed Interchange. The Developer has assured the State that Developer has the ability and will continue to have the ability to provide the funds necessary to process the Change of Access.

THEREFORE, in consideration of the mutual covenants expressed herein, it is further agreed as follows:

NO. 280065  
Filed with the Secretary of State  
Date Filed: 3-10-06  
  
Secretary of State  


**II. SCOPE OF WORK**

## 1. The Developer Shall:

a. Prepare a Change of Access Report, to State standards, referenced in paragraph (3) and in accordance to FHWA requirements, including design and other documentation required in connection with the Change of Access Report.

b. Be responsible for all costs associated with the design and environmental reports required in connection with the Change of Access Report, including but not limited to the following:

Change of Access Report  
Categorical Exclusion Environmental Document  
Geotechnical Memorandum  
Drainage Report  
Design Concept Report  
Traffic Report

c. Deposit \$30,000.00 in the State account under tracs number H6980 01X, which is the estimated cost for the State's review of; (i) the engineering and environmental studies/documents required as a part of the Change of Access Report, and (ii) review of the Change of Access Report.

d. Following the final disposition of the Change of Access Report by FHWA, and a final accounting of the review costs by the State, be responsible for review costs in excess of \$30,000.00.

## 2. The State Shall:

a. Review all design documents, environmental documents and other documents required by the FHWA in connection with the Change of Access Report and provide timely written comments to Developer.

b. Following final disposition of the Change of Access Report by the FHWA, conduct a final accounting of the review costs and either invoice the Developer for the amount due to the State in excess of \$30,000.00 or return to Developer all unused funds.

**III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall remain in full force and effect until final disposition of the Developer's Change of Access Report by FHWA and ADOT.

2. Should Developer fail to fulfill the obligations set forth in this Agreement or withdraw its Change of Access Report for whatever reason, Developer shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for Developer's failure or cancellation is due to the State's failure to comply with its obligations hereunder.

3. This Agreement shall become effective upon signature of the parties hereto.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ. 85007 FAX (602) 712-7424

TMR INVESTORS, LLC.  
8501 N. Scottsdale Road Suite 165  
Scottsdale, Arizona 85253  
Att : Shane Graser, Project Manager  
Phone: (480) 443-5600 ext. 111

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the agreement is in proper form.

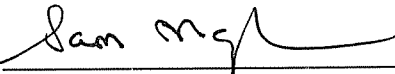
**IN WITNESS WHEREOF**, the parties have executed this agreement the day and year first above written

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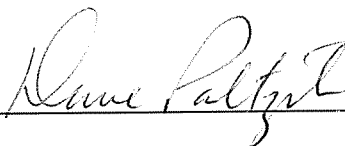
**TMR INVESTORS, LLC**

**STATE OF ARIZONA**  
Department of Transportation

By  \_\_\_\_\_

By  \_\_\_\_\_  
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

**ATTORNEY SIGNATURE**

By  \_\_\_\_\_

G:05-140-I-10 & Tortolito TI  
Town of Marana  
January 17, 2006-ly

**LIMITED LIABILITY COMPANY RESOLUTION  
TMR INVESTORS, LLC**


**DATED: FEBRUARY 23, 2006**

The undersigned co-Managers of **TMR Investors, LLC**, an Arizona limited liability company (the "Company"), hereby adopt and approve the following resolutions:

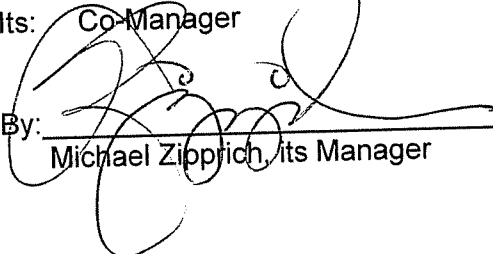
1. RESOLVED, that the Company enter into that certain agreement with the State of Arizona (the "State") dated \_\_\_\_\_ 2006 involving the design and construction of a "Proposed Interchange" located on the east side of Interstate 10, approximately between Mile Post 232 and Mile Post 243 (the "Agreement").
2. RESOLVED, that William Cleverly, as Managing Member of INCA Capital, LLC, an Arizona limited liability company, as co-manager of the Company, be authorized to execute any and all documents related to the Agreement on behalf of the Company;
3. RESOLVED, that this action by unanimous consent in writing may be executed in one or more counterparts, all of which together shall be deemed to be one and the same instrument.

**TMR Investors, LLC**  
an Arizona limited liability company

By: INCA Capital, LLC,  
an Arizona limited liability company,  
Its: Co-Manager

By:   
William Cleverly, Manager

By: Zipprich Group, LLC,  
an Arizona limited liability company,  
Its: Co-Manager

By:   
Michael Zipprich, its Manager

**ARTICLES OF ORGANIZATION  
OF  
TMR INVESTORS, LLC,  
an Arizona limited liability company**

The undersigned has executed this document for the purpose of forming a limited liability company under the laws of Arizona and adopts the following Articles of Organization.

1. **Name.** The name of the Company is: **TMR Investors, LLC**

2. **Purpose and Powers.** The Company is organized for the transaction of any and all lawful business for which a limited liability company may be formed under the laws of the State of Arizona including, but not limited to, the acquisition, development and sale of real property.

3. **Registered Office.** The Company's registered office is: 8501 N. Scottsdale Road, Suite 165, Scottsdale, Arizona 85253.

4. **Statutory Agent.** The name and address of the agent for service of process is: C. Timothy White, Esq., Greenberg Traurig, LLP, 2375 E. Camelback Road, Suite 700, Phoenix, Arizona 85016. The agent, by signing the attached document, accepts the appointment as agent.

5. **Duration.** The latest date the Company can dissolve is December 31, 2035.

6. **Member.** As of the date of these Articles of Organization there are two members of the Company who own a twenty percent (20%) or greater interest in the Company. Those members' names and mailing addresses are: INCA Capital, LLC, 8501 N. Scottsdale Road, Suite 165, Scottsdale, Arizona 85253 and Zipprich Group, LLC, an Arizona limited liability company, 8501 N. Scottsdale Road, Suite 165, Scottsdale, Arizona 85253.

7. **Management.** Management of the Company is vested in managers.


8. **Manager.** The name and mailing address of the managers are:

INCA Capital, LLC, 8501 N. Scottsdale Road, Suite 165, Scottsdale, Arizona 85253; and

Zipprich Group, LLC, an Arizona limited liability company, 8501 N. Scottsdale Road, Suite 165, Scottsdale, Arizona 85253.

9. **Limited Liability of Members.** No Member shall be liable for the action or inaction of the Company or any other Member solely on the basis of his being a Member of the Company.

DATED this 24 day of May, 2005.

  
\_\_\_\_\_  
C. Timothy White

STATE OF ARIZONA  
ACCEPTANCE OF APPOINTMENT AS STATUTORY AGENT

of

TMR INVESTORS, LLC,  
an Arizona limited liability company

To: Arizona Corporation Commission  
Incorporating Division  
1210 West Washington  
Phoenix, Arizona 85007

Please be advised that C. Timothy White, Esq., Greenberg Traurig, LLP, 2375 E. Camelback Road, Suite 700, Phoenix, Arizona 85016, a resident of the State of Arizona for a period in excess of three years, hereby accepts and acknowledges appointment as statutory agent for service of process upon TMR Investors, LLC, an Arizona limited liability company, and consents to act in that capacity until removal or resignation.

DATED this 24<sup>th</sup> day of May, 2005.

  
\_\_\_\_\_  
C. Timothy White

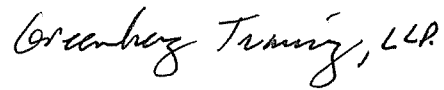
JPA 05-140  
TMR INVESTORS, LLC

ATTORNEY APPROVAL FORM FOR  
TMR INVESTORS LLC

I have reviewed the above referenced Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and TMR INVESTORS, LLC an Arizona Limited Liability Company, declare that this Agreement is within the powers and authority granted to TMR INVESTORS, LLC under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 14<sup>TH</sup> day of February, 2006.

  
Attorney



TMR INVESTORS, LLC

Arizona Department of Transportation

Check Number: 1044  
Check Date: Jan 9, 2006

1044

Check Amount: \$30,000.00

Discount Taken Amount Paid

Item to be Paid - Description

DCR submittal fee - Tracs No H3680-01X & JPA No 2005-140

30,000.00

TMR INVESTORS, LLC

8501 N. SCOTTSDALE RD., STE 165  
SCOTTSDALE, AZ 85253  
(480) 947-5900

1ST NATIONAL BANK OF ARIZONA

17600 N. PERIMETER DR.  
SCOTTSDALE, AZ 85255

91-575/1221

1044

6980  
Tracs H3680-01X & JPA 2005-140

DATE

AMOUNT

Jan 9, 2006

\*\*\*\*\*\$30,000.00

PAY  
TO THE  
ORDER  
OF:

Thirty Thousand and 00/100 Dollars


Arizona Department of Transportation  
206 S. 17th Avenue  
Phoenix, AZ



Security features  
included.  
Details on back.

⑈001044⑈ ⑆122105757⑆ 053001516432⑈



<p><b>TERRY GODDARD</b> Attorney General</p>	<p style="text-align: center;"> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p><b>CIVIL DIVISION</b> <b>TRANSPORTATION SECTION</b> Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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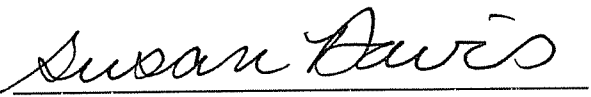
**AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0014TRN (**JPA 05-140**), an Agreement between The State of Arizona and TMR Investors, LLC, an Arizona Limited Liability Company, has been reviewed pursuant to A.R.S. § 28-401 by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED:      March 1, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:949372  
Attachment